



97TH GENERAL ASSEMBLY

State of Illinois

2011 and 2012

SB3371

Introduced 2/7/2012, by Sen. Martin A. Sandoval

SYNOPSIS AS INTRODUCED:

See Index

Amends the Capital Development Board Act. Repeals a provision authorizing the Capital Development Board to adopt rules relating to the issuance, renewal, suspension, or modification of the prequalification of an architect, engineer, or contractor. Amends the Illinois Procurement Code. Provides that the appropriate chief procurement officer (now, the Capital Development Board) may establish procedures and rules for prequalification for suppliers of construction and construction-related services and for firms providing construction management services. Provides that the appropriate chief procurement officer (now, the chief procurement officer for matters other than construction and the higher education chief procurement officer) may develop prequalification standards and categories of professional and artistic services. Amends the Architectural, Engineering, and Land Surveying Qualifications Based Selection Act. Provides that the appropriate chief procurement officer (now, a State agency) may establish procedures to prequalify firms seeking to provide architectural, engineering, and land surveying services. Amends the Design-Build Procurement Act. Provides that, prior to the solicitation of a design-build contract by the Capital Development Board, the chief procurement officer must approve the Board's written determination of the State's best interests. Effective immediately.

LRB097 19874 PJG 65157 b

FISCAL NOTE ACT
MAY APPLY

A BILL FOR

1 AN ACT concerning State government.

2 **Be it enacted by the People of the State of Illinois,**
3 **represented in the General Assembly:**

4 Section 5. The Capital Development Board Act is amended by
5 changing Sections 9.02, 9.06, 9.07, 10.03, and 12 as follows:

6 (20 ILCS 3105/9.02) (from Ch. 127, par. 779.02)
7 Sec. 9.02.

8 To enter into contracts on behalf of the State of Illinois
9 to effectuate the purposes of this Act, subject to The Illinois
10 Procurement Code ~~Purchasing Act~~.

11 (Source: P.A. 77-1995.)

12 (20 ILCS 3105/9.06) (from Ch. 127, par. 779.06)
13 Sec. 9.06.

14 To establish rules and regulations governing the
15 acquisition, planning, construction, reconstruction,
16 improvement and installation of capital facilities as defined
17 in Section 9.01 of this Act, subject to the rulemaking and
18 procurement authority of the chief procurement officer for the
19 Capital Development Board as defined in Section 1-15.15 and as
20 established in Section 10-20 of the Illinois Procurement Code.

21 The Board may require any state agency to submit information
22 deemed necessary for the Board to fulfill its responsibilities

1 under this Act, and may prescribe the form of such report.

2 (Source: P.A. 77-1995.)

3 (20 ILCS 3105/9.07) (from Ch. 127, par. 779.07)

4 Sec. 9.07.

5 To accept assignment of contracts entered into by other
6 state agencies for construction services on projects over which
7 the Board shall have jurisdiction, ~~whether or not such~~
8 ~~contracts shall have been awarded in accordance with the terms~~
9 ~~of the Illinois Purchasing Act.~~

10 (Source: P.A. 77-1995.)

11 (20 ILCS 3105/10.03) (from Ch. 127, par. 780.03)

12 Sec. 10.03. To prepare, or cause to be prepared, such
13 plans, specifications and other documents as are necessary to
14 the taking and acceptance of bids and letting of construction
15 contracts and to advertise for bids for such projects, as
16 required in The Illinois Procurement Code ~~Purchasing Act.~~

17 (Source: P.A. 81-945.)

18 (20 ILCS 3105/12) (from Ch. 127, par. 782)

19 Sec. 12. Nothing in this Act shall be construed to include
20 the power to abrogate those powers vested in the boards of the
21 local public community college districts and the Illinois
22 Community College Board by the Public Community College Act,
23 the Board of Trustees of the University of Illinois, The Board

1 of Trustees of Southern Illinois University, the Board of
2 Trustees of Chicago State University, the Board of Trustees of
3 Eastern Illinois University, the Board of Trustees of Governors
4 State University, the Board of Trustees of Illinois State
5 University, the Board of Trustees of Northeastern Illinois
6 University, the Board of Trustees of Northern Illinois
7 University, and the Board of Trustees of Western Illinois
8 University, hereinafter referred to as Governing Boards. In the
9 exercise of the powers conferred by law upon the Board and in
10 the exercise of the powers vested in such Governing Boards, it
11 is hereby provided that (i) the Board and any such Governing
12 Board may contract with each other and other parties as to the
13 design and construction of any project to be constructed for or
14 upon the property of such Governing Board or any institution
15 under its jurisdiction; (ii) in connection with any such
16 project, compliance with the provisions of the Illinois
17 Procurement Code ~~Purchasing Act~~ by either the Board or such
18 Governing Board shall be deemed to be compliance by the other;
19 (iii) funds appropriated to any such Governing Board may be
20 expended for any project constructed by the Board for such
21 Governing Board; (iv) in connection with any such project the
22 architects and engineers retained for the project and the plans
23 and specifications for the project must be approved by both the
24 Governing Board and the Board before undertaking either design
25 or construction of the project, as the case may be.

26 (Source: P.A. 89-4, eff. 1-1-96.)

1 (20 ILCS 3105/16 rep.)

2 Section 10. The Capital Development Board Act is amended by
3 repealing Section 16.

4 Section 15. The Illinois Procurement Code is amended by
5 changing Sections 30-10, 30-15, 30-20, 30-30, 33-10, and 35-15
6 as follows:

7 (30 ILCS 500/30-10)

8 Sec. 30-10. Authority. Construction agencies, through the
9 appropriate chief procurement officer, shall have the
10 authority to procure construction and construction-related
11 professional services.

12 (Source: P.A. 90-572, eff. date - See Sec. 99-5.)

13 (30 ILCS 500/30-15)

14 Sec. 30-15. Method of source selection.

15 (a) Competitive sealed bidding. Except as provided in
16 subsections (b), (c), and (d) and Sections 20-20, 20-25, and
17 20-30, all State construction contracts shall be procured by
18 competitive sealed bidding in accordance with Section 20-10.

19 (b) Other methods. The appropriate chief procurement
20 officer may ~~Capital Development Board shall~~ establish by rule
21 construction purchases that may be made without competitive
22 sealed bidding and the most competitive alternate method of

1 source selection that shall be used.

2 (c) Construction-related professional services. All
3 construction-related professional services contracts shall be
4 awarded in accordance with the provisions of the Architectural,
5 Engineering, and Land Surveying Qualifications Based Selection
6 Act. "Professional services" means those services within the
7 scope of the practice of architecture, professional
8 engineering, structural engineering, or registered land
9 surveying, as defined by the laws of this State.

10 (d) Correctional facilities. Remodeling and rehabilitation
11 projects at correctional facilities under \$25,000 funded from
12 the General Revenue Fund are exempt from the provisions of this
13 Article. The Department of Corrections may use inmate labor for
14 the remodeling or rehabilitation of correctional facilities on
15 those projects under \$25,000 funded from the General Revenue
16 Fund.

17 (e) Design-build. Subject to the limitations set forth in
18 the Design-Build Procurement Act, the Capital Development
19 Board is authorized to use the design-build delivery method for
20 projects if use of the delivery method is in the best interests
21 of the State.

22 (f) Use of any of the above methods of source selection
23 must be approved by the chief procurement officer.

24 (Source: P.A. 90-572, eff. date - See Sec. 99-5.)

25 (30 ILCS 500/30-20)

1 Sec. 30-20. Prequalification.

2 (a) The appropriate chief procurement officer may ~~Capital~~
3 ~~Development Board shall~~ promulgate rules for the development of
4 prequalified supplier lists for construction and
5 construction-related professional services and the periodic
6 updating of those lists. Construction and construction-related
7 professional services contracts over \$25,000 may be awarded to
8 any qualified suppliers.

9 (b) The Illinois Power Agency shall promulgate rules for
10 the development of prequalified supplier lists for
11 construction and construction-related professional services
12 and the periodic updating of those lists. Construction and
13 construction related professional services contracts over
14 \$25,000 may be awarded to any qualified suppliers, pursuant to
15 a competitive bidding process.

16 (Source: P.A. 95-481, eff. 8-28-07.)

17 (30 ILCS 500/30-30)

18 Sec. 30-30. Contracts in excess of \$250,000. For building
19 construction contracts in excess of \$250,000, separate
20 specifications shall be prepared for all equipment, labor, and
21 materials in connection with the following 5 subdivisions of
22 the work to be performed:

23 (1) plumbing;

24 (2) heating, piping, refrigeration, and automatic
25 temperature control systems, including the testing and

1 balancing of those systems;

2 (3) ventilating and distribution systems for
3 conditioned air, including the testing and balancing of
4 those systems;

5 (4) electric wiring; and

6 (5) general contract work.

7 The specifications must be so drawn as to permit separate
8 and independent bidding upon each of the 5 subdivisions of
9 work. All contracts awarded for any part thereof shall award
10 the 5 subdivisions of work separately to responsible and
11 reliable persons, firms, or corporations engaged in these
12 classes of work. The contracts, at the discretion of the
13 construction agency, may be assigned to the successful bidder
14 on the general contract work or to the successful bidder on the
15 subdivision of work designated by the construction agency
16 before the bidding as the prime subdivision of work, provided
17 that all payments will be made directly to the contractors for
18 the 5 subdivisions of work upon compliance with the conditions
19 of the contract. A contract may be let for one or more
20 buildings in any project to the same contractor. The
21 specifications shall require, however, that unless the
22 buildings are identical, a separate price shall be submitted
23 for each building. The contract may be awarded to the lowest
24 responsible bidder for each or all of the buildings included in
25 the specifications.

26 Until a date 4 years after July 1, 2011, the requirements

1 of this Section do not apply to a construction project for
2 which the Capital Development Board is the construction agency
3 if: (i) the project budget is at least \$15,000,000; (ii) the
4 Capital Development Board has submitted to the Procurement
5 Policy Board a written request, approved by the chief
6 procurement officer for the Capital Development Board, for a
7 public hearing on waiver of the application of the requirements
8 of this Section to that project, including its reasons for
9 seeking the waiver and why the waiver is in the best interest
10 of the State; (iii) the Capital Development Board has posted
11 notice of the waiver hearing on its procurement web page and on
12 the online Procurement Bulletin at least 15 working days before
13 the hearing; (iv) the Procurement Policy Board, after
14 conducting the public hearing on the waiver request, reviews
15 and approves the request in writing before the award of the
16 contract; (v) the successful low bidder has prequalified with
17 the Capital Development Board; (vi) the bid of the successful
18 low bidder identifies the name of the subcontractor, if any,
19 and the bid proposal costs for each of the 5 subdivisions of
20 work set forth in this Section; and (vii) the contract entered
21 into with the successful bidder provides that no identified
22 subcontractor may be terminated without the written consent of
23 the Capital Development Board. With respect to any construction
24 project described in this paragraph, the Capital Development
25 Board shall: (i) provide to the Auditor General an affidavit
26 that the waiver of the application of the requirements of this

1 Section is in the best interest of the State; (ii) specify in
2 writing as a public record that the project shall comply with
3 the disadvantaged business practices of the Business
4 Enterprise for Minorities, Females, and Persons with
5 Disabilities Act and the equal employment practices of Section
6 2-105 of the Illinois Human Rights Act; and (iii) report
7 annually to the Governor and the General Assembly on the
8 bidding, award, and performance. On and after January 1, 2009
9 (the effective date of Public Act 95-758), the Capital
10 Development Board may award in each year contracts with an
11 aggregate total value of no more than \$200,000,000 with respect
12 to construction projects described in this paragraph.

13 Until a date 11 years after November 29, 2005 (the
14 effective date of Public Act 94-699), the requirements of this
15 Section do not apply to the Capitol Building HVAC upgrade
16 project if (i) the bid of the successful bidder identifies the
17 name of the subcontractor, if any, and the bid proposal costs
18 for each of the 5 subdivisions of work set forth in this
19 Section, and (ii) the contract entered into with the successful
20 bidder provides that no identified subcontractor may be
21 terminated without the written consent of the Capital
22 Development Board.

23 (Source: P.A. 96-1204, eff. 7-22-10; 96-1486, eff. 12-30-10;
24 97-182, eff. 7-22-11.)

1 Sec. 33-10. Prequalification. The appropriate chief
2 procurement officer may ~~Board shall~~ establish procedures to
3 prequalify firms seeking to provide construction management
4 services or may use prequalification lists from other State
5 agencies to meet the requirements of this Section.

6 (Source: P.A. 94-532, eff. 8-10-05.)

7 (30 ILCS 500/35-15)

8 Sec. 35-15. Prequalification.

9 (a) The appropriate chief procurement officer may ~~for~~
10 ~~matters other than construction and the higher education chief~~
11 ~~procurement officer shall each~~ develop appropriate and
12 reasonable prequalification standards and categories of
13 professional and artistic services.

14 (b) The prequalifications and categorizations shall be
15 submitted to the Procurement Policy Board and published for
16 public comment prior to their submission to the Joint Committee
17 on Administrative Rules for approval.

18 (c) The appropriate chief procurement officer may ~~for~~
19 ~~matters other than construction and the higher education chief~~
20 ~~procurement officer shall each~~ also assemble and maintain a
21 comprehensive list of prequalified and categorized businesses
22 and persons.

23 (d) Prequalification shall not be used to bar or prevent
24 any qualified business or person for bidding or responding to
25 invitations for bid or proposal.

1 (Source: P.A. 95-481, eff. 8-28-07; 96-920, eff. 7-1-10.)

2 Section 20. The Architectural, Engineering, and Land
3 Surveying Qualifications Based Selection Act is amended by
4 changing Sections 10, 15, and 20 as follows:

5 (30 ILCS 535/10) (from Ch. 127, par. 4151-10)

6 Sec. 10. Federal requirements. In the procurement of
7 architectural, engineering, and land surveying services and in
8 the awarding of contracts, a State agency may comply with
9 federal law and regulations including, but not limited to,
10 Public Law 92-582 (Federal Architect-Engineer Selection Law,
11 Brooks Law, 40 U.S.C. 541) and take all necessary steps to
12 ensure the application of ~~adapt its~~ rules, specifications,
13 policies, and procedures allows the project ~~accordingly~~ to
14 remain eligible for federal aid.

15 (Source: P.A. 87-673.)

16 (30 ILCS 535/15) (from Ch. 127, par. 4151-15)

17 Sec. 15. Definitions. As used in this Act:

18 "Architectural services" means any professional service as
19 defined in Section 5 of the Illinois Architecture Practice Act
20 of 1989.

21 "Chief procurement officer" means a chief procurement
22 officer as defined in Section 1-15.15 and as established in
23 Section 10-20 of the Illinois Procurement Code.

1 "Engineering services" means any professional service as
2 defined in Section 4 of the Professional Engineering Practice
3 Act of 1989 or Section 5 of the Structural Engineering Practice
4 Act of 1989.

5 "Firm" means any individual, sole proprietorship, firm,
6 partnership, corporation, association, or other legal entity
7 permitted by law to practice the profession of architecture,
8 engineering, or land surveying and provide those services.

9 "Land surveying services" means any professional service
10 as defined in Section 5 of the Illinois Professional Land
11 Surveyor Act of 1989.

12 "Project" means any capital improvement project or any
13 design, study, plan, survey, or new or existing program
14 activity of a State agency, including development of new or
15 existing programs that require architectural, engineering, or
16 land surveying services.

17 "State agency" means any department, commission, council,
18 board, bureau, committee, institution, agency, university,
19 government corporation, authority, or other establishment or
20 official of this State.

21 (Source: P.A. 91-91, eff. 1-1-00.)

22 (30 ILCS 535/20) (from Ch. 127, par. 4151-20)

23 Sec. 20. Prequalification. The appropriate chief
24 procurement officer may ~~A State agency shall~~ establish
25 procedures to prequalify firms seeking to provide

1 architectural, engineering, and land surveying services or may
2 use prequalification lists from other State agencies to meet
3 the requirements of this Section.

4 (Source: P.A. 87-673.)

5 Section 25. The Design-Build Procurement Act is amended by
6 changing Sections 5, 10, and 53 as follows:

7 (30 ILCS 537/5)

8 (Section scheduled to be repealed on July 1, 2014)

9 Sec. 5. Legislative policy. It is the intent of the
10 General Assembly that the Capital Development Board be allowed
11 to use the design-build delivery method for public projects if
12 it is shown to be in the State's best interest for that
13 particular project. It shall be the policy of the Capital
14 Development Board in the procurement of design-build services
15 to publicly announce all requirements for design-build
16 services and to procure these services on the basis of
17 demonstrated competence and qualifications and with due regard
18 for the principles of competitive selection.

19 The Capital Development Board shall, prior to issuing
20 requests for proposals, promulgate and publish procedures for
21 the solicitation and award of contracts pursuant to this Act.
22 Any such procedures must be approved by the chief procurement
23 officer and must be consistent with rules adopted by the chief
24 procurement officer.

1 The Capital Development Board shall, for each public
2 project or projects permitted under this Act, make a written
3 determination, including a description as to the particular
4 advantages of the design-build procurement method, that it is
5 in the best interests of this State to enter into a
6 design-build contract for the project or projects. The written
7 determination must be approved by the chief procurement officer
8 prior to the solicitation of a design-build contract. In making
9 that determination, the following factors shall be considered:

10 (1) The probability that the design-build procurement
11 method will be in the best interests of the State by
12 providing a material savings of time or cost over the
13 design-bid-build or other delivery system.

14 (2) The type and size of the project and its
15 suitability to the design-build procurement method.

16 (3) The ability of the State construction agency to
17 define and provide comprehensive scope and performance
18 criteria for the project.

19 No State construction agency may use a design-build
20 procurement method unless the agency determines in writing that
21 the project will comply with the disadvantaged business and
22 equal employment practices of the State as established in the
23 Business Enterprise for Minorities, Females, and Persons with
24 Disabilities Act and Section 2-105 of the Illinois Human Rights
25 Act.

26 The Capital Development Board shall within 15 days after

1 the initial determination provide an advisory copy to the
2 Procurement Policy Board and maintain the full record of
3 determination for 5 years.

4 (Source: P.A. 94-716, eff. 12-13-05.)

5 (30 ILCS 537/10)

6 (Section scheduled to be repealed on July 1, 2014)

7 Sec. 10. Definitions. As used in this Act:

8 "State construction agency" means the Capital Development
9 Board.

10 "Chief procurement officer" means the chief procurement
11 officer for the Capital Development Board as defined in Section
12 1-15.15 and as established in Section 10-20 of the Illinois
13 Procurement Code.

14 "Delivery system" means the design and construction
15 approach used to develop and construct a project.

16 "Design-bid-build" means the traditional delivery system
17 used on public projects in this State that incorporates the
18 Architectural, Engineering, and Land Surveying Qualification
19 Based Selection Act (30 ILCS 535/) and the principles of
20 competitive selection in the Illinois Procurement Code (30 ILCS
21 500/).

22 "Design-build" means a delivery system that provides
23 responsibility within a single contract for the furnishing of
24 architecture, engineering, land surveying and related services
25 as required, and the labor, materials, equipment, and other

1 construction services for the project.

2 "Design-build contract" means a contract for a public
3 project under this Act between the State construction agency
4 and a design-build entity to furnish architecture,
5 engineering, land surveying, and related services as required,
6 and to furnish the labor, materials, equipment, and other
7 construction services for the project. The design-build
8 contract may be conditioned upon subsequent refinements in
9 scope and price and may allow the State construction agency to
10 make modifications in the project scope without invalidating
11 the design-build contract.

12 "Design-build entity" means any individual, sole
13 proprietorship, firm, partnership, joint venture, corporation,
14 professional corporation, or other entity that proposes to
15 design and construct any public project under this Act. A
16 design-build entity and associated design-build professionals
17 shall conduct themselves in accordance with the laws of this
18 State and the related provisions of the Illinois Administrative
19 Code, as referenced by the licensed design professionals Acts
20 of this State.

21 "Design professional" means any individual, sole
22 proprietorship, firm, partnership, joint venture, corporation,
23 professional corporation, or other entity that offers services
24 under the Illinois Architecture Practice Act of 1989 (225 ILCS
25 305/), the Professional Engineering Practice Act of 1989 (225
26 ILCS 325/), the Structural Engineering Licensing Act of 1989

1 (225 ILCS 340/), or the Illinois Professional Land Surveyor Act
2 of 1989 (225 ILCS 330/).

3 "Evaluation criteria" means the requirements for the
4 separate phases of the selection process as defined in this Act
5 and may include the specialized experience, technical
6 qualifications and competence, capacity to perform, past
7 performance, experience with similar projects, assignment of
8 personnel to the project, and other appropriate factors. Price
9 may not be used as a factor in the evaluation of Phase I
10 proposals.

11 "Proposal" means the offer to enter into a design-build
12 contract as submitted by a design-build entity in accordance
13 with this Act.

14 "Request for proposal" means the document used by the State
15 construction agency to solicit proposals for a design-build
16 contract.

17 "Scope and performance criteria" means the requirements
18 for the public project, including but not limited to, the
19 intended usage, capacity, size, scope, quality and performance
20 standards, life-cycle costs, and other programmatic criteria
21 that are expressed in performance-oriented and quantifiable
22 specifications and drawings that can be reasonably inferred and
23 are suited to allow a design-build entity to develop a
24 proposal.

25 (Source: P.A. 94-716, eff. 12-13-05.)

1 (30 ILCS 537/53)

2 (Section scheduled to be repealed on July 1, 2014)

3 Sec. 53. Federal requirements. In the procurement of
4 design-build contracts, the State construction agency shall
5 comply with federal law and regulations and take all necessary
6 steps to ensure the application of ~~adapt their~~ rules, policies,
7 and procedures allows the project to remain eligible for
8 federal aid.

9 (Source: P.A. 94-716, eff. 12-13-05.)

10 Section 99. Effective date. This Act takes effect upon
11 becoming law.

1 INDEX

2 Statutes amended in order of appearance

3	20 ILCS 3105/9.02	from Ch. 127, par. 779.02
4	20 ILCS 3105/9.06	from Ch. 127, par. 779.06
5	20 ILCS 3105/9.07	from Ch. 127, par. 779.07
6	20 ILCS 3105/10.03	from Ch. 127, par. 780.03
7	20 ILCS 3105/12	from Ch. 127, par. 782
8	20 ILCS 3105/16 rep.	
9	30 ILCS 500/30-10	
10	30 ILCS 500/30-15	
11	30 ILCS 500/30-20	
12	30 ILCS 500/30-30	
13	30 ILCS 500/33-10	
14	30 ILCS 500/35-15	
15	30 ILCS 535/10	from Ch. 127, par. 4151-10
16	30 ILCS 535/15	from Ch. 127, par. 4151-15
17	30 ILCS 535/20	from Ch. 127, par. 4151-20
18	30 ILCS 537/5	
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